

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Guidant Corp. Implantable Defibrillators
Products Liability Litigation

MDL No. 1708
(DWF/AKB)

This Document Relates to All Actions

JOINT AGENDA FOR MAY 17, 2006
STATUS CONFERENCE

The parties have agreed upon the following agenda for the Case Status Conference to be held on May 17, 2006:

1. Number and status of cases transferred into the MDL
2. Discovery status
3. Representative trial process update
4. [Proposed] Defendant Fact Sheet
5. Stays pending transfer to MDL
6. Master Complaint response – Proposed Scheduling Order (Attachment A)
7. [Proposed] Short form complaint, *i.e.*, Complaint by Adoption (Attachments B (PDF form) & C (Word form)) and Proposed Order for same (Attachment D)
8. Plaintiff Fact Sheet motions to dismiss – status / scheduling (Attachment E – Proposed Order)
9. Plaintiff Fact Sheet objections (Defendants' issue) / revisions (Plaintiffs' issue)
10. Deposition Protocol potential amendment
11. Device testing protocol Proposed Order (Attachments F & F(A))
12. Preemption Summary Judgment Motion response date
13. Scheduling of Next Discovery Conference Call and Status Conference

Dated: May 15, 2006

Respectfully submitted,

s/ Richard Arsenault
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Respectfully submitted ,

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Defendants' Liaison Counsel

ATTACHMENT A

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

**In re: Guidant Defibrillators Products
Liability Litigation**

MDL Case No. 1708 (DWF/AJB)

Relates to ALL ACTIONS

**JOINT PROPOSED
PRETRIAL ORDER NO. ____**

ESTABLISHING RESPONSE DATE TO PLAINTIFFS' MASTER COMPLAINT

The parties agree, and the Court hereby orders, that Defendants' Response to Plaintiffs' Master Complaint shall be filed on or before Monday, June 26, 2006.

So Ordered.

Dated: May __, 2006

DONOVAN W. FRANK
Judge of United States District Court

ATTACHMENT B

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE GUIDANT DEFIBRILLATORS
PRODUCTS LIABILITY LITIGATION

Court File No. 05-md-1708

COMPLAINT BY ADOPTION

[JURY TRIAL DEMANDED]

This pleading relates to:

Clear Form

_____,
Plaintiff,

-against-

GUIDANT CORPORATION, *et al.*,
Defendants,

COMPLAINT BY ADOPTION

1. Plaintiff, _____, states [his / her] claims against Defendants indicated below as follows and incorporates by reference the relevant portions of Plaintiffs' Master Complaint for Personal Injury, Economic Loss, Third Party Payor and Medicare Secondary Payor Act Claims, Including Class Actions (the "Master Complaint") on file with the Clerk of the Court for the United States District Court for the District of Minnesota in the manner entitled In RE GUIDANT DEFIBRILLATORS PRODUCT LIABILITY LITIGATION, No 05-md-1708.

2. Plaintiff, _____, is a citizen and resident of _____ County, _____, and claims damages as set forth below.

ALLEGATIONS AS TO INJURIES

3. The Plaintiff has suffered injuries as a result of having the following implantable defibrillator device manufactured:

Defendants listed by their actions or inactions proximately caused plaintiff's injuries.

4. As a result of the injuries that Plaintiff has sustained, Plaintiff asserts entitlement to recover damages and/or restitution.

5. That on or about _____ Plaintiff had the above-referenced defibrillator implanted _____.

6. As a result of the defibrillator, Plaintiff suffered injury and damages as set forth in the Master Complaint.

ALLEGATIONS AS TO DEFENDANTS

7. The entities named as Defendants in the Master Complaint and the allegations with regard them thereto in the Master Complaint are herein adopted by reference.

SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

8. Provided that Plaintiff herein does not does not, unless this case is itself filed as a putative class action, agree to be a member of any class, classes, or subclasses that have been or may hereafter be proposed in this litigation, whether set forth in the Master Complaint or otherwise, and reserves the right to make any class action participation decision as may be permitted by virtue of a right to opt-out as may be applicable by law, the following claims and allegations asserted in the Master Complaint and the allegations with regard thereto in the Master Complaint are herein adopted by reference:

- ___ INTRODUCTION;
- ___ PARTIES;
- ___ JURISDICTION AND VENUE;
- ___ FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS;
- ___ CLASS ACTION ALLEGATIONS (*see* reservation above);

CLAIMS FOR RELIEF – DEVICE RECIPIENT PLAINTIFFS:

- ___ COUNT I (Strict Liability – Failure to Warn);
- ___ COUNT II (Strict Liability – Design And/Or Manufacturing Defect);
- ___ COUNT III (Negligence);
- ___ COUNT IV (Negligence Per Se);
- ___ COUNT V (Breach of Implied Warranty);
- ___ COUNT VI (Fraud);
- ___ COUNT VII (Constructive Fraud);
- ___ COUNT VIII (Unfair and Deceptive Trade Practices Under State Law);
- ___ COUNT IX (Under The Senior Citizen And Handicapped Person Consumer Fraud Act, Minnesota Statute § 325F.71 And/Or Similar Statutes In Effect In Other Jurisdictions);
- ___ COUNT X (Negligent Infliction of Emotional Distress);
- ___ COUNT XI (Intentional Infliction of Emotional Distress);
- ___ COUNT ELEVEN (Violation of Consumer Protection Statutes);
- ___ COUNT XII (Gross Negligence/ Malice);
- ___ COUNT XIII (Loss of Consortium);
- ___ COUNT XIV (Wrongful Death)

- _____ COUNT XV (Survival Action);
- _____ COUNT XVI (Medical Monitoring);
- _____ COUNT XVII (Medical Monitoring);

CLAIMS FOR RELIEF – THIRD PARTY PAYOR PLAINTIFFS:

- _____ COUNT XVIII (Violation of The Minnesota Deceptive Trade Practice Act);
- _____ COUNT XIX (Violation of the Minnesota Prevention Of Consumer Fraud Act);
- _____ COUNT XX (Violation of Minnesota False Statements In Advertising Statute);
- _____ COUNT XXI (Unfair And Deceptive Practices Under State Law);
- _____ COUNT XXII (Subrogation Liability Determination);
- _____ COUNT XXIII (Unjust Enrichment);
- _____ COUNT XXIV (Breach of Implied Warranty);
- _____ COUNT XXV (Breach of Assumed Contractual Warranty Obligations);
- _____ COUNT XXVI (Misrepresentation by Omission);

CLAIMS FOR RELIEF – MEDICARE SECONDARY PAYOR PLAINTIFFS:

- _____ COUNT XXVII (Breach of Assumed Contractual Warranty Obligations);
- _____ COUNT XXVIII (Liability As First Party Insurer Under MSP: Agreement to Pay Medical Costs);
- _____ COUNT XXIX (Liability As First Party Insurer Under MSP: Provision of Express and Implied Warranties);
- _____ COUNT XXX (Liability As Third Party Insurer Under MSP: Liability As Holder of A Liability Insurance Policy or Plan);

to reimburse health care providers for all health care services provided to all Medicare beneficiaries resulting from the recalled Devices, which expenditures Defendants were required or responsible to make under the Medicare Secondary Payer Statute;

_____. For an award of attorneys' fees and costs;

_____. For prejudgment interest and the costs of suit;

_____. For such other and further relief as this Court may deem just and proper; and

_____. For preference in setting the matter for trial pursuant to Cal. Civ. Proc. Code § 36; Fla.

Stat. § 415.1115; 735 Ill. Comp. Stat. 5/2-1007.1; La. Code Civ. Proc. art. 1573; and N.Y. CPLR

3403.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Date:

Respectfully submitted,

ATTACHMENT C

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE GUIDANT DEFIBRILLATORS
PRODUCTS LIABILITY LITIGATION

Court File No. 05-md-1708

COMPLAINT BY ADOPTION
(Device Recipient Plaintiff)

This pleading relates to:

[JURY TRIAL DEMANDED]

_____[Name of Plaintiff]_____,

[_____[Name of Plaintiff]_____,

Plaintiff[s],

-against-

GUIDANT CORPORATION, *et al.*,

Defendants,

DEVICE RECIPIENT PLAINTIFF COMPLAINT BY ADOPTION

1. Plaintiff, _____[Name of Plaintiff]_____, states [his / her] claims against Defendants indicated below as follows and incorporates by reference the relevant portions of Plaintiffs' Master Complaint for Personal Injury, Economic Loss, Third Party Payor and Medicare Secondary Payor Act Claims, Including Class Actions (the "Master Complaint") on file with the Clerk of the Court for the United States District Court for the District of Minnesota in the manner entitled In RE GUIDANT DEFIBRILLATORS PRODUCT LIABILITY LITIGATION, No 05-md-1708.

2. Plaintiff, _____[Name of Plaintiff]_____, is a citizen and resident of _____ County, _____[State]_____, and claims damages as set forth below.

2a. Plaintiff Spouse, _____[Name of Spouse]_____, is a citizen and resident of _____County, _____[State]_____, and claims damages as set forth below. Plaintiff and Plaintiff Spouse have been married since _____[Date of Marriage]_____. (Optional)

2b. Plaintiff Decedent _____[Name of Deceased Plaintiff]_____ was a citizen and resident of _____County, _____[State]_____, and claims damages as set forth below. Plaintiff Decedent died on _____[Date of Death]_____. (Optional)

2c. Representative Plaintiff, _____[Name of Plaintiff]_____, is a citizen and resident of _____County, _____[State]_____. Representative Plaintiff was appointed administrator/representative of the Estate of _____[Name of Deceased Plaintiff]_____ on _____[Date of Appointment]_____ by _____[Name of Probate Court]_____. [Optional]

2d. [Other plaintiff(s) – same as above]

ALLEGATIONS AS TO INJURIES

3. The Plaintiff is a Device Recipient Plaintiff and has suffered injuries as a result of having the following Device manufactured:

_____ [Device] _____

Defendants listed by their actions or inactions proximately caused Plaintiff's injuries.

4. As a result of the injuries that Plaintiff has sustained, Plaintiff asserts entitlement to recover damages and/or restitution.

5. That on or about _____[Date]_____, Plaintiff had the above-referenced Device implanted _____[Where / By Whom [if known]_____].

6. As a result of the Device, Plaintiff suffered injury and damages as set forth in the Master Complaint.

7. [Same as above for other plaintiff[s]]

ALLEGATIONS AS TO DEFENDANTS

7. The entities named as Defendants in the Master Complaint and the allegations with regard them thereto in the Master Complaint are herein adopted by reference.

SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

8. Provided that Plaintiff[s] herein does[do] not agree to be a member of any class, classes, or subclasses that have been or may hereafter be proposed in this litigation, whether set forth in the Master Complaint or otherwise, but reserves[] the right to make any class action participation decision as may be permitted by virtue of a right to opt-out as may be applicable by law, the following claims and allegations asserted in the Master Complaint and the allegations with regard thereto in the Master Complaint are herein adopted by reference:

____ INTRODUCTION;

____ PARTIES;

____ OTHER PARTIES; (Identify and plead in additional allegations)

____ [Name Additional Defendants]

____ JURISDICTION AND VENUE;

____ FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS;

CLAIMS FOR RELIEF – DEVICE RECIPIENT PLAINTIFFS:

____ COUNT I (Strict Liability – Failure to Warn);

____ COUNT II (Strict Liability – Design And/Or Manufacturing Defect);

____ COUNT III (Negligence);

____ COUNT IV (Negligence Per Se);

____ COUNT V (Breach of Implied Warranty);

- _____ COUNT VI (Fraud);
- _____ COUNT VII (Constructive Fraud);
- _____ COUNT VIII (Unfair and Deceptive Trade Practices Under State Law);
- _____ Identify either State or Subparagraph number
- _____ COUNT IX (Under The Senior Citizen And Handicapped Person Consumer Fraud Act, Minnesota Statute § 325F.71 And/Or Similar Statutes In Effect In Other Jurisdictions); [List Specific Statute, if appropriate]
- _____ COUNT X (Negligent Infliction of Emotional Distress);
- _____ COUNT XI (Intentional Infliction of Emotional Distress);
- _____ COUNT XII (Gross Negligence/ Malice);
- _____ COUNT XIII (Loss of Consortium);
- _____ COUNT XIV (Wrongful Death);
- _____ COUNT XV (Survival Action);
- _____ COUNT XVI (Medical Monitoring);
- _____ COUNT XVII (Unjust Enrichment)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff[s] seeks judgment in [his / her / their] favor against the Defendants as follows, and following the Prayer for Relief and other allegations contained in the Master Complaint:

1. For the equitable relief requested;
2. For all compensatory and/or statutory damages or restitution, according to proof;
3. For leave to seek punitive or exemplary damages against Defendants, at the appropriate time under governing law as determined by the Court, consistent with the degree of

Defendants' reprehensibility and the resulting harm or potential harm to Plaintiff[s], and in an amount sufficient to punish Defendants and deter others from similar wrongdoing;

4. For declaratory judgment that Defendants are liable to Plaintiff[s] for all evaluative, monitoring, diagnostic, preventative, and corrective medical, surgical, and incidental expenses, costs and losses caused by Defendants' wrongdoing;

5. For medical monitoring, whether denominated as damages or in the form of equitable relief;

6. For a disgorgement of profits and restitution of all costs related to the Devices;

7. For an award of attorneys' fees and costs;

8. For prejudgment interest and the costs of suit;

9. For such other and further relief as this Court may deem just and proper; and

TRIAL SETTING PRIORITY

[If applicable; include relevant information for each, if more than one, plaintiff]

Plaintiff [was born on ____[date]____ and Plaintiff is over the age of ____[age]____,

and] is otherwise entitled to trial setting preference or priority under

_____ Cal. Civ. Proc. Code § 36

_____ Fla. Stat. § 415.1115

_____ 735 Ill. Comp. Stat. 5/2-1007.1

_____ La. Code Civ. Proc. art. 1573

_____ N.Y. CPLR 3403

_____ [Other: specify: _____]

JURY DEMAND

Plaintiff[s] hereby demands[] a jury trial on all issues so triable.

Date: _____

Respectfully submitted,

[NAME AND ADDRESS OF COUNSEL]

ATTACHMENT D

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In Re: Guidant Implantable Defibrillators
Products Liability Litigation

MDL No. 05-md-1708

**ORDER RE: COMPLAINT
BY ADOPTION FORM**

This Document Relates to All Actions

The Parties submitted an agreed upon Complaint by Adoption form in the above-referenced matter.

The Court hereby Orders that any individual may use either of the attached Complaint by Adoption forms to adopt relevant portions of the Mater Consolidated Complaint for Individuals on file with the Clerk of Court in the above-referenced matter.

Date:

____s/ Arthur J. Boylan_____
ARTHUR J. BOYLAN
United States Magistrate Judge

ATTACHMENT E

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

**In re: Guidant Defibrillators Products
Liability Litigation**

MDL Case No. 1708 (DWF/AJB)

Relates to ALL ACTIONS

**JOINT PROPOSED
PRETRIAL ORDER NO. __**

**ESTABLISHING BRIEFING SCHEDULE AND HEARING DATE FOR
DEFENDANTS' MOTIONS TO DISMISS FOR FAILURE TO COMPLY WITH
THIS COURT'S JANUARY 31, 2006 ORDER**

The parties agree, and the Court hereby orders, that the following briefing schedule and hearing date concerning Defendants' Motions to Dismiss for Failure to Comply with this Court's January 31, 2006 Order shall apply:

1. Plaintiffs shall file their Responses to Defendants' Motions to Dismiss on or before June 1, 2006.
2. Defendants shall file their Replies in Support of Motions to Dismiss on or before June 8, 2006.
3. The Court shall hear arguments on this matter during the hearing currently scheduled for June 20, 2006.

So Ordered.

Dated: May __, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court

ATTACHMENT F

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

**In re: Guidant Defibrillators Products
Liability Litigation**

MDL Case No. 1708 (DWF/AJB)

Relates to ALL ACTIONS

**PROPOSED PRETRIAL
ORDER NO. __**

**ESTABLISHING PROTOCOL FOR DISCOVERY AND TESTING
REGARDING DEVICES IN PLAINTIFFS' POSSESSION**

1. Pursuant to Federal Rule of Civil Procedure 26, any Plaintiff in possession of a device at issue must produce to Defendants, within thirty (30) days from the date of this Order, the following discovery:

A. The model number and serial number of each device at issue.

B. All documents, photographs, and other records that relate to any device testing, including visual inspections, data downloads, interrogations, or any other type of testing that Plaintiffs might have conducted on the devices at issue.

C. All documents that relate to any autopsy reports of Plaintiffs' decedents.

D. All documents that relate to the cause of death of Plaintiffs' decedents.

2. In addition, any Plaintiff in possession of a device at issue must produce that device to Defendants, according to the schedule set out in Paragraph 3, for testing and analysis in the presence of Plaintiff or Plaintiff's designated representative. Such analysis and testing shall include the following:

- A. Performing “Save to Disk” and “Hex Dump” downloads.
- B. Visually inspecting the devices at issue.
- C. Performing electrical and/or destructive analysis and testing as

permitted by the Court or agreed to by the parties.

3. Schedule for device production:

A. Plaintiffs who are in possession of their devices and alleging death must produce their devices, within thirty (30) days of the date of this Order, to FAEGRE & BENSON, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901, (612) 766-7000. A list of Plaintiffs who are alleging death is attached as **Attachment A**.

B. Plaintiffs who are in possession of their devices and alleging physical injury must produce their devices, within sixty (60) days of the date of this Order, to FAEGRE & BENSON, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901, (612) 766-7000.

C. Plaintiffs who are in possession of their devices and not alleging physical injury must produce their devices, within ninety (90) days of the date of this order, to FAEGRE & BENSON, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901, (612) 766-7000.

4. Any Plaintiff who is no longer in possession of a device at issue must provide, within thirty (30) days from the date of this Order, any and all information related to the current whereabouts of that device unless it is in Defendants’ possession.

So Ordered.

Dated: May __, 2006

s/Donovan W. Frank

DONOVAN W. FRANK

Judge of United States District Court

ATTACHMENT F(A)

MDL Plaintiffs Alleging Death

ANDERSON, Irene (06-cv-568)

BLANTON, Betty (06-cv-853)

BOHANNON, Willie Lee Jr (06-cv-00146; MDL 06-1196)

BRENNAN, John (05-CV-827; MDL 05-2597)

BREWER, Glendene (05-cv-2884)

BROWN, Marcita (06-cv-00650)

BROWN, Robert Jr. (06-cv-01093; MDL 06-1574)

BURGESS, Shirley (MDL 06-852)

BURKE, Jean (05-cv-444; MDL 06-93)

CANTU, Thomas (06-cv-1207)

CARENDER, Joni (05-cv-510; MDL 06-681)

CARROLL, Paul (06-cv-390)

COHEN, Matthew L. (06-cv-1119)

COMMANDER, Catherine (06-cv-246)

EDGE, Juanita (05-cv-873)

ENICH, Dorothy C (06-cv-849)

FORBES, Juanita (Forbes, Robert) (05-cv-2113; MDL 06-20)

FORBES, Juanita (Legeros, Chris) (05-cv-2113; MDL 06-20)

FOX, Irma (05-cv-1570; MDL 05-1570)

GARRISON, Linda M. (06-cv-0073; MDL 06-680)

HAACK, Marilyn (06-cv-01053)

HALL, Sharon (05-cv-764; MDL 06-686)

HOCKING, Sandra (MDL 06-1199)

KING, Judith E. (06-cv-00391; MDL 06-1571)

LAKIN, James (0:06-9cv-0038)

LITTLE, Charles H. (MDL 06-99)

MARTIN, Betty (06-cv-392)

MILLER, Barbara (06-cv-01401)

MORNEAU, Estate of Robert N. (06-cv-230; MDL 06-1197)

OXENDINE, Beatrice (06-cv-303)

PAXSON, Diana (06-cv-1089; MDL 06-1578)

POUNCY, Patrick (MDL 06-52)

ROBINSON, Claris (05-cv-23131; MDL 06-624)

SCHACHER, Jeffery (05-cv-299; MDL 06-383)

SCHUCK, Kelly (MDL 06-677)

SHAPIRO, Hilda (06-cv-848)

SHEA, Theresa (05-cv-04250; MDL 06-40)

SHORTER, Gloria (06-cv-00252)

SMITH, Alice J. (06-CV-01729)

SMITH, Robert Earl (MDL 06-30)

TISDON, Doris (05-cv-1512; MDL 06-51)

TORRICELLI, Donna (06-cv-00254)

VIERA, Maria M. (MDL 06-1569)

WARREN, M.B. (Collins, Jimmy) (06-cv-200)

WARREN, M.B. (Russell, Lettye) (06-cv-200)

WESTCOTT III, Redge (MDL 06-46)

WOOD, Lanette (05-cv-2951, MDL 06-381)